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STAATSKOERANT
VAN DIE REPUBLIEK VAN SUID-AFRIKA

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GOVERNMENT GAZETTE

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[No. 5624

DEPARTEMENT VAN DIE EERSTE MINISTER

DEPARTMENT OF THE PRIME MINISTER

No. 1173. 1 Julie 1977.
Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—
No. 94 van 1977: Wysigingswet op Finansiële Instellings, 1977.

No. 1173. 1 July 1977.
It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—
No. 94 of 1977: Financial Institutions Amendment Act 1977.

ACT

To amend the Insurance Act, 1943, so as to redefine "insurance business"; to provide for an advisory committee on long-term insurance; to further regulate the holding of assets; to further regulate the transmission of short-term insurance premiums received by intermediaries; to extend the non-forfeiture provisions relating to funeral policies; to provide for the accrual of interest on a loan or advance, on the security of an insurance policy, to an amount beyond the principal debt, and to limit the prescription of a loan or advance, on the security of an insurance policy, to at least the period of prescription of liability under the policy; to amend the Pension Funds Act, 1956, so as to redefine "financial year"; to further regulate the exemption of pension funds from the Act; to further regulate the holding of assets; and to further regulate the protection of pension benefits; to amend the Inspection of Financial Institutions Act, 1962, so as to redefine "financial institution"; and to extend the registrar's powers of inspection; to amend the Banks Act, 1965, so as to further regulate prescribed investments and investments in Government securities; to further regulate the restrictions on the investment by banking institutions in certain assets; to further regulate the control over banking institutions and the transfer of part of the business of a banking institution; and to extend the powers of curators; to amend the Building Societies Act, 1965, so as to further regulate prescribed investments; and to exempt the State from providing additional security in connection with advances to its employees; and to provide for incidental matters.

*(Afrikaans text signed by the State President.)
(Assented to 20 June 1977.)*

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

Amendment of
section 1 of
Act 27 of 1943,
as amended by
section 2 of

1. Section 1 of the Insurance Act, 1943, is hereby amended by the insertion in subsection (1) after paragraph (a) of the definition of "insurance business" of the following paragraph:

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Act 73 of 1951,
section 39 of
Act 24 of 1956,
section 50 of
Act 25 of 1956,
section 1 of
Act 79 of 1959,
section 1 of
Act 10 of 1965,
section 1 of
Act 41 of 1966,
section 1 of
Act 65 of 1968,
section 1 of
Act 39 of 1969,
section 1 of
Act 91 of 1972
and section 1 of
Act 101 of 1976.

“(aA) the activities of a medical scheme as defined in section 1 of the Medical Schemes Act, 1967 (Act No. 72 of 1967);”

Insertion of
section 2A in
Act 27 of 1943.

2. The following section is hereby inserted in the Insurance Act, 1943, after section 2:

“Advisory
committee:

2A. (1) (a) The Minister shall appoint an advisory committee on matters relating to long-term insurance, consisting of the registrar as chairman and such other members as the Minister may from time to time determine.

(b) A member of the advisory committee shall hold office for such period as the Minister may determine and shall be eligible for reappointment upon the expiration of his period of office.

(2) The advisory committee may from time to time conduct any investigation into, and advise the registrar or make recommendations to the Minister on, any matter relating to long-term insurance, and shall advise the Minister on any such matter referred to it by the Minister.

(3) The registrar may submit to the advisory committee any information which is in his possession or which he may obtain and which is relevant to any matter which the advisory committee is investigating or considering.

(4) (a) The advisory committee may appoint one or more sub-committees for the purpose of considering, and advising on, such matters relating to long-term insurance as may be referred to such a sub-committee by the advisory committee.

(b) The advisory committee shall appoint as members of a sub-committee such of its members and such other persons, and for such periods of office, as it may from time to time determine.

(5) The advisory committee may call to its assistance such person or persons as it may deem necessary to assist it, or to investigate matters relating to long-term insurance.

(6) The registrar shall be responsible for the administration of the advisory committee and any sub-committee.”

Amendment of
section 17 of
Act 27 of 1943,
as substituted by
section 12 of
Act 10 of 1965
and amended by
section 4 of
Act 41 of 1966,
section 2 of
Act 91 of 1972
and section 6 of
Act 101 of 1976.

3. Section 17 of the Insurance Act, 1943, is hereby amended—

(a) by the insertion after paragraph (a) of subsection (2) of the following paragraph:

“(aA) The percentages of thirty and fifty referred to in subparagraphs (i) and (ii) of paragraph (a) shall be increased—

(i) (aa) with effect from 30 September 1977, to thirty-three and fifty-three, respectively;

(bb) with effect from 31 December 1977, to thirty-four and fifty-four, respectively;
and

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- (cc) with effect from 31 March 1978, to thirty-five and fifty-five, respectively; or
- (ii) with effect from any or each of the dates stated in subparagraph (i), with such lower percentages as the Minister may by notice in the *Gazette* determine.”;
- (b) by the insertion after paragraph (b) of subsection (2) of the following paragraph:
 - “(bA) The percentages of fifteen and twenty referred to in subparagraphs (i) and (ii) of paragraph (b) shall be increased—
 - (i) (aa) with effect from 30 September 1977, to seventeen and twenty-two, respectively;
 - (bb) with effect from 31 December 1977, to seventeen and one-quarter and twenty-two and one-quarter, respectively; and
 - (cc) with effect from 31 March 1978, to seventeen and one-half and twenty-two and one-half, respectively; or
 - (ii) with effect from any or each of the dates stated in subparagraph (i), with such lower percentages as the Minister may by notice in the *Gazette* determine.”;
- (c) by the insertion after paragraph (a) of subsection (5) of the following paragraph:
 - “(aA) The percentage of thirty referred to in paragraph (a) shall be increased—
 - (i) (aa) with effect from 30 September 1977, to thirty-three;
 - (bb) with effect from 31 December 1977, to thirty-four; and
 - (cc) with effect from 31 March 1978, to thirty-five; or
 - (ii) with effect from any or each of the dates stated in subparagraph (i), with such lower percentage as the Minister may by notice in the *Gazette* determine.”; and
- (d) by the insertion after paragraph (c) of subsection (5) of the following paragraph:
 - “(cA) The percentage of fifteen referred to in paragraph (c) shall be increased—
 - (i) (aa) with effect from 30 September 1977, to seventeen;
 - (bb) with effect from 31 December 1977, to seventeen and one-quarter; and
 - (cc) with effect from 31 March 1978, to seventeen and one-half; or
 - (ii) with effect from any or each of the dates stated in subparagraph (i), with such lower percentage as the Minister may by notice in the *Gazette* determine.”;

Amendment of section 18 of Act 27 of 1943, as substituted by section 13 of Act 10 of 1965 and amended by section 5 of Act 41 of 1966, section 3 of Act 91 of 1972 and section 7 of Act 101 of 1976.

4. Section 18 of the Insurance Act, 1943, is hereby amended—

- (a) by the insertion after paragraph (a) of subsection (2) of the following paragraph:
 - “(aA) The percentages of thirty and fifty referred to in subparagraphs (i) and (ii) of paragraph (a) shall be increased—
 - (i) (aa) with effect from 30 September 1977, to thirty-three and fifty-three, respectively;
 - (bb) with effect from 31 December 1977, to thirty-four and fifty-four, respectively; and
 - (cc) with effect from 31 March 1978, to thirty-five and fifty-five, respectively; or

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- (ii) with effect from any or each of the dates stated in subparagraph (i), with such lower percentages as the Minister may by notice in the *Gazette* determine.”;
- (b) by the insertion after paragraph (b) of subsection (2) of the following paragraph:
 - “(bA) The percentages of fifteen and twenty referred to in subparagraphs (i) and (ii) of paragraph (b) shall be increased—
 - (i) (aa) with effect from 30 September 1977, to seventeen and twenty-two, respectively;
 - (bb) with effect from 31 December 1977, to seventeen and one-quarter and twenty-two and one-quarter, respectively; and
 - (cc) with effect from 31 March 1978, to seventeen and one-half and twenty-two and one-half, respectively; or
 - (ii) with effect from any or each of the dates stated in subparagraph (i) with such lower percentages as the Minister may by notice in the *Gazette* determine.”;
- (c) by the insertion after paragraph (a) of subsection (5) of the following paragraph:
 - “(aA) The percentage of thirty referred to in paragraph (a) shall be increased—
 - (i) (aa) with effect from 30 September 1977, to thirty-three;
 - (bb) with effect from 31 December 1977, to thirty-four; and
 - (cc) with effect from 31 March 1978, to thirty-five; or
 - (ii) with effect from any or each of the dates stated in subparagraph (i), with such lower percentage as the Minister may by notice in the *Gazette* determine.”; and
- (d) by the insertion after paragraph (c) of subsection (5) of the following paragraph:
 - “(cA) The percentage of fifteen referred to in paragraph (c) shall be increased—
 - (i) (aa) with effect from 30 September 1977, to seventeen;
 - (bb) with effect from 31 December 1977, to seventeen and one-quarter; and
 - (cc) with effect from 31 March 1978, to seventeen and one-half; or
 - (ii) with effect from any or each of the dates stated in subparagraph (i), with such lower percentage as the Minister may by notice in the *Gazette* determine.”;

Amendment of section 18bis of Act 27 of 1943, as substituted by section 4 of Act 91 of 1972 and amended by section 8 of Act 101 of 1976.

5. Section 18bis of the Insurance Act, 1943, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The registrar may, to the extent and subject to such conditions as he may determine, in exceptional circumstances permit an insurer to depart from any of the requirements of subsections (2) (aA) and (bA) and (5) (aA) and (cA) of section 17, subsections (2) (aA) and (bA) and (5) (aA) and (cA) of section 18 and subsections (1) and (2) of this section.”.

Amendment of section 20bis of Act 27 of 1943, as inserted by section 17 of Act 10 of 1965 and amended by section 7 of Act 41 of 1966.

6. Section 20bis of the Insurance Act, 1943, is hereby amended—

(a) by the substitution for subsections (1), (2) and (3) of the following subsections:

“(1) No registered insurer shall, except as provided in subsections (2) and (3), authorize or permit an agent, broker or other person, not being a registered insurer, to retain or deal with any moneys in respect of premiums

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received or deemed to have been received in terms of subsection (2) (a) (ii) or (iii) on behalf of such insurer and relating to short-term insurance business carried on by such insurer in the Republic.

(2) (a) Every such agent, broker or person who receives such premiums on behalf of such insurer shall—

(i) within six days of receipt thereof, transmit the amount thereof to such insurer; or

(ii) forthwith deposit the amount thereof in a separate trust account, and, in respect of premiums received before 1 October 1977, within forty-five days, in respect of premiums received on or after 1 October 1977, but before 1 January 1979, within ninety days, and, in respect of premiums received on or after 1 January 1979, within sixty days, of the end of the month during which such premiums were received by such agent, broker or person, transmit to such insurer all moneys so deposited, and for the purposes of this subparagraph premiums with a due date of 1 October 1977 or later shall be deemed to have been received on the due date of such premiums, if not received on an earlier date; or

(iii) pay the amount thereof to such insurer, in respect of premiums received before 1 January 1979, within ninety days, and, in respect of premiums received on or after 1 January 1979, within sixty days, of the end of the month during which such premiums were received by such agent, broker or person, and for the purposes of this subparagraph premiums with a due date earlier than 1 October 1977 shall be deemed to have been received on the date on which they became due to the insurer by the owners of the policies in question, if not received on an earlier date, and premiums with a due date of 1 October 1977 or later shall be deemed to have been received on the due date of such premiums, if not received on an earlier date.

(b) Any such agent, broker or person may before remitting any moneys in terms of subparagraph (i), (ii) or (iii) of paragraph (a), set off any moneys owing to him by such insurer.

(3) (a) Every such agent, broker or person shall forthwith upon becoming indebted to any insurer, elect to remit in terms of either subparagraph (i) or subparagraph (ii) or subparagraph (iii) of paragraph (a) of subsection (2), and in writing advise such insurer of the election made by him, and any such agent, broker or person who desires to change his election shall give not less than ninety days' written notice of the change to every insurer to whom he has given notice of such election or of any such change.

(b) Any such agent, broker or person who intends to remit in terms of subparagraph (iii) of subsection (2) (a) shall furnish security for any amount which may become payable by him to insurers in terms of that subparagraph, and such security shall be in the form of a banker's guarantee issued by the Land

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(c) Such guarantee shall be in favour of the registrar and in a form prescribed by regulation for the benefit of all such insurers, and shall be for an amount certified by the auditor of the agent, broker or person concerned to be equal to not less than twenty-five per cent of the premiums which became due to registered insurers by such agent, broker or person in his last financial year after setting off any moneys which were owing to such agent, broker or person by such insurers, but shall not be for less than ten thousand rand or more than one hundred thousand rand or, with effect from 1 October 1977, for less than one hundred thousand rand or for more than two hundred and fifty thousand rand.”;

(9) For the purposes of this section—

'due date', in relation to a premium; means—

(b) in the case of an existing policy which has been renewed, the renewal date of the policy;

and

"premium" includes a deposit premium."

7. Section 62 of the Insurance Act, 1943, is hereby amended—

b) by the insertion after subsection (4) of the following subsections:

(4A) (a) If any premium under a funeral policy which is a domestic policy and which was issued on or after the date of commencement of the Financial Institutions Amendment Act, 1977, is not paid within the period mentioned in subsection (3)*bis*, the policy shall nevertheless remain in force for the full sum insured without payment of further premiums for a period which shall be calculated from the following table:

Number of completed years for which premiums were paid under policy, expressed as a percentage of the premium term.	Period (in years) for which the policy remains in force as from the date when first unpaid premium became due.
Less than 10%	0
10% or more, but less than 19%	1
19% " " 26%	2
26% " " 32%	3
32% " " 38%	4
38% " " 43%	5
43% " " 48%	6
48% " " 54%	7
54% " " 60%	8
60% " " 67%	9
67% " " 76%	10
76% " " 85%	11
85% " " 100%	12

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Provided that—

- (i) if the insurer's liability under the policy is contingent upon the death of one person only, who was under nine years of age when the policy was issued, the number of completed years for which premiums were paid under the policy and the premium term shall be computed as if the policy had been issued on its anniversary when the said person was between nine and ten years of age;
- (ii) if the insurer's liability under the policy is contingent upon the death of two or more persons, and if the policy provides for any benefit on the death of any person who is under the age of twenty-one years and who is not the owner of the policy or his wife or her husband, no benefit shall be claimable under that policy on the said person's death if it occurs after he attained the age of twenty-one years.

- (b) The provisions of this subsection shall not apply if the premium term and the number of completed years for which premiums were paid under the policy are as set out in the following table:

Premium term.	Number of completed years for which premiums were paid under policy.
20 years or more	Less than 5
15 years or more, but less than 20 years	4
10 years or more, but less than 15 years	3
5 years or more, but less than 10 years	2
Less than 5 years	1

- (c) For the purpose of this subsection 'premium term' means the lesser of fifty years and—

- (i) in the case of a policy under which premiums are payable for the whole of life, the number of years between the date of commencement of the policy and the ninetieth anniversary of the birthday of the eldest life assured; and
- (ii) in the case of a policy under which premiums are payable for a stated term, the number of years in such term.

(4B) The provisions of subsections (4) and (4A) shall not apply with reference to any particular kind of funeral policy which an insurer has issued or proposes to issue, if the registrar is satisfied that the actuarial nature of such kind of policy prevents the insurer from accumulating, in respect of policies of that kind, sufficient funds to enable him to grant any substantial benefit of a kind described in the said subsections."

Insertion of
section 68A in
Act 27 of 1943.

8. The following section is hereby inserted in the Insurance Act, 1943, after section 68:

"Interest
on and
prescription
of policy
loans.

68A. (1) Interest on a loan or advance made by a registered insurer on the sole security of a policy under which the insurer is liable, shall not cease to accrue when interest has accumulated to an amount equal to the principal debt.

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(2) A debt which arose or arises out of a loan or advance such as is contemplated in subsection (1), shall not become prescribed before the liability of the insurer under the policy in question becomes prescribed, if such policy was issued after 31 December 1973."

Amendment of section 1 of Act 24 of 1956, as amended by section 21 of Act 101 of 1976.

9. Section 1 of the Pension Funds Act, 1956, is hereby amended by the substitution in subsection (1) for the definition of "financial year" of the following definition:

"'financial year', in relation to a fund, means—

- (a) each period of twelve months, at the end of which the balance of its accounts is required to be struck in terms of its rules; or
- (b) such other period as may on any particular occasion be determined by the registrar at the written request of the fund, on such conditions as the registrar may impose; or
- (c) in the case of a fund which is registered at the commencement of the Financial Institutions Amendment Act, 1977, and which notifies the registrar in writing before 1 January 1979 that it intends changing the date on which its financial year ends from 31 December to another date, the period extending from its last financial year, which ends on 31 December, to such other date, provided such period does not exceed eighteen months."

Amendment of section 2 of Act 24 of 1956.

10. Section 2 of the Pension Funds Act, 1956, is hereby amended—

- (a) by the substitution for the words following subsection (3) (a) (ii) of the following words:

"he may, subject to the provisions of paragraph (aA), in writing exempt that fund on such conditions as he may specify from the operation of such provisions of this Act as he may deem expedient."

- (b) by the insertion after paragraph (a) of subsection (3) of the following paragraph:

"(aA) (i) The provisions of sections 37A, 37B and 37C shall as from the commencement of the Financial Institutions Amendment Act, 1977, apply also with reference to any registered fund to which those provisions did not apply immediately before the said commencement.

- (ii) Any provision inserted in this Act by, or after the commencement of, the Financial Institutions Amendment Act, 1977, shall apply with reference to all registered funds, including any fund previously exempted in terms of this subsection, except in so far as any exemption may have been granted from any such provision in terms of this subsection.

- (iii) No fund shall be exempted from the provisions of sections 37A, 37B, 37C and 37D;"

- (c) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

"(b) The registrar may at any time by notice in writing to the fund withdraw, wholly or in part and on any ground which he deems sufficient, any exemption granted under paragraph (a)."

Amendment of section 19 of Act 24 of 1956, as amended by section 13 of Act 80 of 1959,

11. Section 19 of the Pension Funds Act, 1956, is hereby amended by the insertion after subsection (1) of the following subsection:

- "(1A) The percentages of fifty and twenty referred to in subsection (1) shall be increased—

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section 9 of
Act 58 of 1966,
section 1 of
Act 80 of 1969,
section 2 of
Act 23 of 1970,
section 7 of
Act 91 of 1972
and section 23 of
Act 101 of 1976.

- (a) (i) with effect from 30 September 1977, to fifty-three and twenty-two, respectively;
- (ii) with effect from 31 December 1977, to fifty-four and twenty-two and one-quarter, respectively; and
- (iii) with effect from 31 March 1978, to fifty-five and twenty-two and one-half, respectively; or
- (b) with effect from any or each of the dates stated in paragraph (a), with such lower percentages as the Minister may by notice in the *Gazette* determine."

Substitution of
section 37A of
Act 24 of 1956,
as inserted by
section 24 of
Act 101 of 1976.

12. The following section is hereby substituted for section 37A of the Pension Funds Act, 1956:

"Pension
benefits not
reducible,
transferable
or
executable.

37A. (1) Save to the extent permitted by this Act, the Income Tax Act, 1962 (Act No. 58 of 1962), and the Maintenance Act, 1963 (Act No. 23 of 1963), no benefit provided for, in the rules of a registered fund (including an annuity purchased or to be purchased by the said fund from an insurer for a member), or right to such benefit, or right in respect of contributions made by or on behalf of a member, shall, notwithstanding anything to the contrary contained in the rules of such a fund, be capable of being reduced, transferred or otherwise ceded, or of being pledged or hypothecated, or be liable to be attached or subjected to any form of execution under a judgment or order of a court of law, or to the extent of not more than three thousand rand per annum, be capable of being taken into account in a determination of a judgment debtor's financial position in terms of section 65 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and in the event of the member or beneficiary concerned attempting to transfer or otherwise cede, or to pledge or hypothecate, such benefit or right, the fund concerned may withhold, suspend or entirely discontinue payment thereof: Provided that the fund may pay any such benefit or any benefit in pursuance of such contributions, or part thereof, to any one or more of the dependants of the member or beneficiary or to a guardian or trustee for the benefit of such dependant or dependants during such period as it may determine.

(2) (a) If in terms of the rules of a fund the residue of a full benefit, after deduction of any debt due by the person entitled to the benefit, represents the benefit due to that person, such reduction shall for the purposes of subsection (1) be construed as a reduction of the benefit.

(b) The set-off of any debt against a benefit shall for the purposes of subsection (1) be construed as a reduction of the benefit.

(3) The provisions of subsection (1) shall not apply with reference to anything done towards reducing or obtaining settlement of a debt—

(a) which, in the case of a fund to which the Financial Institutions Amendment Act, 1976 (Act No. 101 of 1976), applies, arose before the commencement of that Act;

(b) which, in the case of a fund to which the Financial Institutions Amendment Act, 1976, does not apply, arose before the commencement of the Financial Institutions Amendment Act, 1977; or

(c) which a fund may reduce or settle under section 37D, to the extent to which a fund may reduce or settle such debt."

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Substitution of section 37B of Act 24 of 1956, as inserted by section 24 of Act 101 of 1976.

13. The following section is hereby substituted for section 37B of the Pension Funds Act, 1956:

"Effect of insolvency on pension benefits.

37B. If the estate of any person entitled to a benefit payable in terms of the rules of a registered fund (including an annuity purchased by the said fund from an insurer for that person) is sequestrated or surrendered, such benefit or any part thereof which became payable after the commencement of the Financial Institutions Amendment Act, 1976 (Act No. 101 of 1976), shall not be deemed to form part of the assets in the insolvent estate of that person and may not in any way be attached or appropriated by the trustee in his insolvent estate or by his creditors, notwithstanding anything to the contrary in any law relating to insolvency."

Insertion of section 37D in Act 24 of 1956.

14. The following section is hereby inserted in the Pension Funds Act, 1956, after section 37C:

"Fund may make certain deductions from pension benefits.

37D. A registered fund may—

(a) deduct any amount due to the fund in respect of—

(i) a loan granted to a member in terms of section 19 (5) (a); or

(ii) any amount for which the fund is liable under a guarantee furnished in respect of a loan by some other person to a member for any purpose referred to in section 19 (5) (a), from the benefit to which the member or a beneficiary is entitled in terms of the rules of the fund, to an amount not exceeding the amount which in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), may be taken by a member or beneficiary as a lump sum benefit as defined in the Second Schedule to that Act;

(b) deduct any amount due by a member to his employer on the date of his retirement or on which he ceases to be a member of the fund, in respect of—

(i) (aa) a loan granted by the employer to the member for any purpose referred to in section 19 (5) (a); or

(bb) any amount for which the employer is liable under a guarantee furnished in respect of a loan by some other person to the member for any purpose referred to in section 19 (5) (a),

to an amount not exceeding the amount which in terms of the Income Tax Act, 1962, may be taken by a member or beneficiary as a lump sum benefit as defined in the Second Schedule to that Act; or

(ii) compensation (including any legal costs recoverable from the member in a matter contemplated in subparagraph (bb)) in respect of any damage caused to the employer by reason of any theft, dishonesty, fraud or misconduct by the member, and in respect of which—

(aa) the member has in writing admitted liability to the employer; or

(bb) judgment has been obtained against the member in any court, including a magistrate's court,

from any benefit payable in respect of the member or a beneficiary in terms of the rules of

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the fund, and pay such amount to the employer concerned;

- (c) deduct any amount which the fund has paid or will pay by arrangement with, and on behalf of, a member or beneficiary in respect of—

(i) such member's or beneficiary's subscription to a medical scheme, registered otherwise than provisionally in terms of the Medical Schemes Act, 1967 (Act No. 72 of 1967); or

(ii) any insurance premium payable by such member or beneficiary to an insurer registered in terms of the Insurance Act, 1943 (Act No. 27 of 1943),

from the benefit to which the member or beneficiary is entitled in terms of the rules of the fund, and pay such amount, if due, to such medical scheme or such insurer, as the case may be."

Amendment of section 1 of Act 68 of 1962, as amended by section 33 of Act 43 of 1975 and section 32 of Act 101 of 1976.

15. Section 1 of the Inspection of Financial Institutions Act, 1962, is hereby amended by the insertion in the definition of "financial institution" after the words "underwriters at Lloyds," of the words "or any other person in respect of whom section 20bis of the last-mentioned Act or a regulation made in terms of section 23A of that Act applies,".

Amendment of section 3 of Act 68 of 1962.

16. Section 3 of the Inspection of Financial Institutions Act, 1962, is hereby amended by the insertion of the following paragraph after paragraph (d):

"(dA) if the registrar has reason to believe that the financial institution has contravened a provision of section 20bis of the Insurance Act, 1943 (Act No. 27 of 1943), or of a regulation made in terms of section 23A of that Act; or"

Amendment of section 18 of Act 23 of 1965, as substituted by section 15 of Act 91 of 1972.

17. Section 18 of the Banks Act, 1965, is hereby amended—

- (a) by the substitution for the words "ten per cent" of the words "fifteen per cent"; and for the words "five per cent" of the words "eight and a half per cent"; and
(b) by the addition of the following subsection, the existing section becoming subsection (1):

"(2) The amendment effected by the Financial Institutions Amendment Act, 1977, to subsection (1), shall come into operation on 31 March 1978: Provided that a banking institution (other than a discount house) shall as from the dates mentioned in the first column of the table hereunder maintain prescribed investments, to an amount not less than the percentage mentioned opposite those dates in the second column of such table, of the long-term liabilities mentioned in subsection (1), and of which prescribed investments an amount equal to not less than the percentage of the said liabilities mentioned opposite those dates in the third column of such table, shall consist of securities issued by the Government of the Republic.

Date	Percentage of long-term liabilities to be held in	
	Prescribed Investments	Securities issued by the Government of the Republic
1 July 1977	12	6
1 October 1977	13	7
1 January 1978	14	8"

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Amendment of section 21A of Act 23 of 1965, as inserted by section 47 of Act 101 of 1976.

18. Section 21A (1) of the Banks Act, 1965, is hereby amended by the substitution for the words preceding the proviso of the following words:

"The total amount of a banking institution's investment in fixed property, in loans and advances to subsidiaries of the banking institution of which the main object is the holding of fixed property and in shares (excluding building society shares and redeemable preference shares but not preference shares which can be converted into ordinary shares), including shares in subsidiary companies of the banking institution, shall not exceed the banking institution's paid-up capital and unimpaired reserves:"

Substitution of section 27C of Act 23 of 1965, as inserted by section 48 of Act 101 of 1976.

19. The following section is hereby substituted for section 27C of the Banks Act, 1965:

"Limitation on banks under control of a controlling company.

27C. A banking institution or a registered bank controlling company shall not without the written approval of the registrar, directly or indirectly control more than one banking institution in any class of banking institution mentioned in section 1 (1), or, in the case of a controlling banking institution, a banking institution of the same class as it: Provided that a registered bank controlling company which controls a discount house shall not control any other banking institution."

Substitution of section 30bis of Act 23 of 1965, as inserted by section 11 of Act 82 of 1965.

20. The following section is hereby substituted for section 30bis of the Banks Act, 1965:

"Transfer of part of bank's business to another banking institution.

30A. (1) When—
(a) a general bank carries on other business in addition to accepting deposits and proposes to transfer its business of accepting deposits to any other banking institution;
(b) a banking institution proposes to transfer to another banking institution, approved for the purpose by the registrar, that part of its business which it conducts in a particular area and which constitutes a minor portion of its total business, it shall furnish a return to the registrar setting forth to the satisfaction of the registrar all its assets and liabilities and, separately, those assets and liabilities which it proposes to transfer to such other banking institution.

(2) The part of the assets and liabilities referred to in subsection (1) may, with the written consent of the Minister and on the conditions determined by him, be transferred to or taken over by another banking institution: Provided that no such consent shall be given by the Minister unless—

- (a) he is satisfied that—
(i) the transfer or taking over in question will not be detrimental to the public interest;
(ii) having regard to all the circumstances, a reasonable and fair division of the assets, the capital and reserves and the other liabilities of the bank or banking institution concerned has been made with regard to the transfer of the relevant part of its business;
(b) in the case of a banking institution referred to in subsection (1) (b), the banking institution furnishes the Minister with an undertaking to his satisfaction that for such period or periods as are acceptable to the Minister, the transferee banking institution will be in a position to meet its obligations in respect of the liabilities to the public transferred to it.

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(3) The provisions of subsections (2), (3) and (4) of section 30 shall *mutatis mutandis* apply in relation to the assets and liabilities transferred in terms of subsection (2) of this section."

Substitution of
section 40 of
Act 23 of 1965.

21. The following section is hereby substituted for section 40 of the Banks Act, 1965:

"Appointment
of curator
to banking
institution.

40. (1) If any banking institution is in financial difficulties, the Minister may, if he deems it desirable in the public interest, after consultation with the institution and with the written consent of such institution, appoint a curator to the institution and thereupon the provisions of paragraphs (b) to (g), inclusive, and (i) to (l), inclusive, of section 433 and sections 434 (2), 436, 437 and 440 of the Companies Act, 1973, (Act No. 61 of 1973), shall apply *mutatis mutandis*, in so far as such provisions are not inconsistent with the provisions of this section, in relation to the institution and to the curator: Provided that for the purposes of this section the powers conferred and the duties imposed by the said provisions upon the court, the Master and the judicial manager, respectively, shall devolve upon the Minister, the Registrar and the curator, respectively.

(2) The Minister shall appoint a curator by letter of appointment which shall set out—

- (a) the name of the institution in respect of which the curator is appointed and the address of its head office;
- (b) directions in regard to the security which the curator has to furnish for the proper performance of his duties;
- (c) directions in regard to the remuneration of the curator;
- (d) such other directions as to the management of the institution or any matter incidental thereto, including directions in regard to the raising of money by the institution, as the Minister may deem necessary.

(3) The Minister may, in the letter of appointment or at any time subsequent thereto, empower the curator in his discretion but subject to any condition which the Minister may impose—

- (a) to suspend or reduce, as from the date of his appointment as curator or any subsequent date, the right of any creditor of the institution to claim or receive interest on any moneys owing to him by the institution;
- (b) to make payments, whether in respect of capital or interest, to any creditor or creditors of the institution at such time, in such order and in such manner as he may deem fit;
- (c) to cancel any agreement between the institution and any other party to advance moneys due after the date of his appointment as curator, or to cancel any agreement to extend any existing facility, if, in the opinion of the curator, such advance or any loan under such facility would not be adequately secured or would not be repayable on terms satisfactory to the curator or if the institution lacks the necessary funds to meet its obligations under any such agreement or if it would not otherwise be in the interests of the institution.

(4) The Minister may, at any time and in any manner, amend or withdraw the directions in the letter

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of appointment, and the powers granted by him under subsection (3), to the curator.

(5) On the appointment of a curator—

- (a) the management of the institution in question shall vest in the curator, subject to the supervision of the Registrar, and any other person vested with the management of the affairs of the institution shall be divested thereof; and
- (b) the curator shall recover and take possession of all the assets of the institution.

(6) While such institution is under curatorship—

- (a) all actions, legal proceedings, the execution of all writs, summonses and other legal process against the institution shall be stayed and not be instituted or proceeded with without the leave of the court;
- (b) the operation of set-off in respect of any amount owing by a creditor to the institution shall be suspended.

(7) The Registrar shall as soon as is practicable notify the appointment of a curator and the powers granted to him on his appointment, and any amendment or withdrawal of such powers, by notice in the *Gazette*.

(8) A curator appointed by the Minister under this section after 28 November 1976 but prior to the commencement of the Financial Institutions Amendment Act, 1977, shall be deemed to have been appointed, as from the date of his original appointment, in terms of, and to have been vested with all the powers which can be granted to a curator under, the provisions of this section, as amended by that Act."

Amendment of section 32 of Act 24 of 1965, as amended by section 19 of Act 91 of 1972.

22. Section 32 of the Building Societies Act, 1965, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A permanent society shall maintain prescribed investments to an amount not less than ten per cent of its liabilities to the public inclusive of all classes of shares issued by it but excluding the amount of advances granted but not yet paid out and the amount of advances made by the State to the society, as shown in the last preceding monthly return furnished by it to the registrar in terms of section 34 (1): Provided that of such prescribed investments an amount at least equal to the percentage of the said liabilities which the Minister may from time to time prescribe by notice in the *Gazette*, subject to such conditions as he may determine, shall consist, whether wholly as, or in accordance with the ratio, determined by the Minister, of securities issued by the Government of the Republic, which do not rank as liquid assets, or of stocks of, or loans to, a local authority in the Republic, or of debentures, bonds or securities issued by a public corporation in the Republic: Provided further that the Minister may exempt permanent societies from the provisions of this subsection to such extent, for such periods and on such conditions as he may determine."

Amendment of section 46 of Act 24 of 1965, as amended by section 13 of Act 67 of 1973.

23. Section 46 (1) of the Building Societies Act, 1965, is hereby amended by the addition of the following proviso:

"Provided that the registrar, after consultation with the Treasury, the Department of Community Development and the Association of Building Societies of South Africa, may approve that, for such period as he may determine, the said additional security shall not be required in respect of guarantees furnished by the Minister of Finance or an Administrator of a province in respect of persons referred to

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in subparagraph (i) or (ii) of section 50 (2) (a) of the Finance and Financial Adjustments Acts Consolidation Act, 1977 (Act No. 11 of 1977).".

Short title and commencement.

24. (1) This Act shall be called the Financial Institutions Amendment Act, 1977.

(2) The provisions of sections 21 and 23 shall be deemed to have come into operation on 28 November 1976 and 1 May 1974, respectively.